

DAVID A. ROSENFELD, Bar No. 058163  
WEINBERG, ROGER & ROSENFELD  
A Professional Corporation  
1001 Marina Village Parkway, Suite 200  
Alameda, California 94501  
Telephone (510) 337-1001  
Fax (510) 337-1023  
E-Mail: drosenfeld@unioncounsel.net  
nlrbnotices@unioncounsel.net

Attorneys for the Union, UNITED FOOD AND  
COMMERCIAL WORKERS LOCAL NO. 5

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 32

UNITED FOOD COMMERCIAL WORKERS  
LOCAL 5 (SAFEWAY STORES),

and

CHRISTOPHER RATANA-KELLEY, an  
Individual.

Case 32-CB-219981

**OPPOSITION TO MOTION TO  
STRIKE ANSWER AND  
AFFIRMATIVE DEFENSES**

Preliminary statement: The motions filed by Mr. Solem contain personal attacks and political tirades. See, for example, footnote 1 to each of the Petitions to Revoke Subpoena Duces Tecum. We do not respond as Mr. Solem's conduct is inappropriate. The fact that Respondent asserts in a pleading that Mr. Solem is associated with a racketeering enterprise doesn't give him license to make personal attacks. The facts will speak for themselves. Mr. Solem should be admonished. Counsel for Responded declines to be baited into a response.

1. This Opposition is filed without waiving the Respondent's position that the organization which represents the Charging Party is a racketeering enterprise and is otherwise improperly involved in this case. This Opposition is also filed without waiving the Respondent's position regarding the participation of Mr. Solem.

2. This Motion to Strike Answer has not been joined by the General Counsel. Thus, the motion goes beyond the theory of the General Counsel's case and must be rejected. See,

*Coastal Marine Services*, 367 NLRB No. 58, fn. 2 (2019). This point is supported by the “Counsel for the General Counsel’s Partial Joinder of Charging Party’s etc. ...” Counsel only seeks to strike three of the Affirmative Defenses. We address that Motion separately.

3. The Motion is to strike the entire Answer. The Motion does not address many of the Affirmative Defenses and the Answer itself goes to the heart of this case. At some point the parties will have to wade through the allegations of the Complaint, the denials of the Complaint as well as all of the Affirmative Defenses. The Administrative Law Judge may reject some of them, just as the Administrative Law Judge will reject some of the allegations in the Complaint. Nonetheless, the fact that the Charging Party asserts that some of the Affirmative Defenses are “frivolous” does not detract from the fact that overall the answer raises many defenses, including the defense in the currently pending Motion For Summary Judgment which is pending before the Board.

4. There are compelling First Amendment and Religious Freedom Restoration Act and other arguments which will defeat this Complaint.

5. The Board has recently ruled that it cannot find violations of the Act made under First Amendment defenses raised by an entity which files a lawsuit. See, *Anheuser-Busch, LLC*, 367 NLRB No. 132 (2019), because the entire Answer, irrespective of any particular affirmative defense, is not a sham and cannot be stricken without violating the First Amendment Right of responding to the petition.

6. The Board is required to follow the Federal Rules of Civil Procedure as far as they are applicable. See, 29 USC § 160. There is no motion to dismiss an answer within the Federal Rules of Civil Procedure. There is no Board Rule adopting such a procedure.

7. The Charging Party requests the ALJ review the accompanying Petitions to Revoke Subpoenas. As we have explained in our response to those Petitions, it is the Respondent’s position that the Charging Party and his parents are on an “ideological tirade” and whatever was put in any letters to the Charging Party would have been irrelevant. We have cited in those responses Board cases which adopt that theory in similar union security situations and other situations. Moreover the Charging Party was given an opportunity to clarify any questions

he had. Simply put, Mr. Ratana-Kelley never considered what was sent him and its content are thus irrelevant.

8. The Motion to strike the Answer is untimely in that it was not filed more than 28 days before the hearing, because it is in the nature of a motion for summary judgment.

9. The Motion to strike the Answer is improper because the Respondent has filed an Amended Answer to the Complaint and the motion does not address the most recent Answer.

10. It is curious that Mr. Solem cites a case in which the Board sought to accommodate the immigration status of workers. His organization is nativist and anti-immigrant. Respondent is not at this point required to make any arguments or offers of proof.

11. The Motion is a veiled effort to achieve summary judgment. The Charging Party concedes that the General Counsel seeks to establish a new legal regime. Summary judgment is not appropriate where the ALJ is required, in any case, to follow current Board.

12. The Motion should be denied. Respondent will seek fees at the appropriate time from the Charging Party for his efforts to interfere with the First Amendment, the religious rights of the Respondent and other rights of the Respondent.

13. For all these reasons the Motion should be denied. The parties will litigate the validity of the Complaint and the Answer as well as the Affirmative Defenses.

Dated: June 5, 2019

Organize and Resist,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
DAVID A. ROSENFELD

Attorneys for the Union, UNITED FOOD AND  
COMMERCIAL WORKERS LOCAL 5

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## PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On June 5, 2019, I served the following documents in the manner described below:

### OPPOSITION TO MOTION TO STRIKE ANSWER AND AFFIRMATIVE DEFENSES

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net) to the email addresses set forth below.

On the following part(ies) in this action:

Aaron B. Solem  
8001 Braddock Road, Suite 600  
Springfield, VA 22160  
[abs@nrtw.org](mailto:abs@nrtw.org)

Tracy Clark  
National Labor Relations Board, Region 32  
Field Examiner  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5224  
[tracy.clark@nlrb.gov](mailto:tracy.clark@nlrb.gov)

- ☒ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

On the following part(ies) in this action:

Christopher Ratana-Kelley  
1601 Colchester Street  
Danville, CA 94506

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 5, 2019, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler